IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 8TH MARCH 2007 / 17TH PHALGUNA 1928

Tr.P(Crl.).No. 37 of 2007()

SC.439/2004 of II ADDL. SESSIONS COURT-II, PALAKKAD

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PETITIONER:

KUNJAMMA VARGHESE, AGED 72,
W/O. LATE VARGHESE, PANAMTHOTTATHIL
PERUMPETTY P.O., MALLAPPALLY
PATHANAMTHITTA DIST.

BY ADV. SRI.S.SANTOSH KUMAR (PERUNAD)

RESPONDENTS/STATE/A3 TO A5:

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1. STATE OF KERALA REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. BRIGHTY, D/O. LATE VARGHESE, AGED 44
PANAMTHOTTATHIL, PERUMPETTY P.O.
MALLAPPALLY, PATHANAMTHITTA DIST.

3. SAMSUN, S/O. SAM MATHEW, AGED 24
KANNIYATHU VEEDU, THIRUVALLA.

4. KUNJUMON, S/O. NANU, AGED 54
CHAMAVILAYIL VEEDU, PERUVANTHANAM
MARUTHAMMOODU, IDUKKI DIST.

R1 BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS TRANSFER PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 08/03/2007, THE COUR T ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Tr.P.(Cri) NO. 37 OF 2007

Dated this the 8th day of March, 2007

ORDER

The petitioner is the 2nd accused in a prosecution, inter alia, under Secs.120B and 364 of the IPC. Her deceased son is the 1st accused. The alleged incident took place as early as in 2002. S.C.No.439/04 is pending before the Assistant Sessions Court-II, Palakkad. The court has not framed charges yet, it is submitted. The petitioner, in these circumstances, has come to this Court with a prayer that the case may be transferred from the court at Palakkad to any competent court at Thiruvalla or Pathanamthitta.

2. What is the reason? The only reason urged is that the petitioner is old and sick and that, in these circumstances, to cater to the needs of justice, there may be a direction for transfer of the case. Such transfer is not likely to inconvenience the 65 witnesses cited by the prosecution or the co-accused. In these circumstances, it is prayed that the transfer may be directed as prayed for.

3. I am not satisfied that sufficient grounds exist to

justify the prayer for transfer. Venue of the trial cannot be decided merely on the basis of the convenience of one of the accused persons. The jurisdiction legitimately is that of the court at Palakkad. Even the averments in the transfer petition show that a number of witnesses to be examined are from Palakkad, of course, some of them are coming from different places also. But this, according to me, is not a sufficient ground by themselves to direct transfer as prayed for.

4. The learned counsel for the petitioner submits that the petitioner is old and sick. She is not able to move about. She does not dispute her identity. None of the witnesses is there to implicate her directly and she is arrayed only as one of the conspirators . In these circumstances, I do not find any reason for the court to insist on the personal appearance of the petitioner on all dates of trial. The petitioner can certainly apply to be exempted from personal appearance making it clear that she does not intend to dispute her identity in the trial. The learned Assistant Sessions Judge must pass appropriate orders on such application. Unnecessary insistence on personal

appearance of the petitioner, needless to say, should not be made by the court.

5. With the above observations, this transfer petition is dismissed.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge